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IN DEFENSE OF THE STATE-BASED ACCOUNT OF HARMING

by

HARRISON LEE

Under the Direction of Andrew Jason Cohen, PhD

ABSTRACT

According to the dominant account of harming, to harm an agent is to cause her to occupy a harmed state. Matthew Hanser rejects this “state-based” account, arguing that each version of it faces counterexamples. Instead, Hanser argues, to harm an agent is to cause her to suffer harm, where suffering harm is undergoing an event: in particular, it is losing or being prevented from receiving a basic good. In this thesis, I argue that this “event-based” account is, at best, a version of the state-based account. The identity of any event as the suffering of a harm, I argue, derives from the fact that it causes the agent to occupy a harmed state. I then defend the “counterfactual comparative” version of the state-based account against three prominent objections. The intended upshot of my arguments is that the state-based account of harming is superior to its event-based counterpart.

INDEX WORDS: Action theory, Counterfactuals, Preemption, Omissions, Metaphysics of harm, Matthew Hanser

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HARRISON LEE

Committee Chair: Andrew Jason Cohen

Committee: Andrew I. Cohen

Timothy O’Keefe

George Rainbolt

Electronic Version Approved:

Office of Graduate Studies

College of Arts and Sciences

Georgia State University

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DEDICATION

I dedicate this thesis to my parents, to whom I am indebted for their unfailing support.

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I am grateful to my committee members for providing insightful and thorough feedback on countless drafts of this thesis. Their comments proved crucially valuable throughout the writing process. I am especially thankful to the chair of my committee, Andrew Jason Cohen. His clever objections helped me to make my arguments as strong as possible. Additionally, I would like to thank my cohort for the many helpful conversations they shared with me. Finally, I am grateful to my parents, without whose love and support this thesis would not have been possible.

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1 INTRODUCTION

The dominant account of harming tells us that to harm an agent is to cause her to occupy a state in which she fares badly. Proponents of this “state-based” account must provide an answer to the question, “What is the amount of welfare, a , such that in order to be harmed, an agent must be made to have less welfare than a ?” I shall call this question, “the question of the standard.” Matthew Hanser argues that each initially plausible answer to this question faces insurmountable counterexamples (2008, 422, 440). I shall call the (alleged) lack of an available response to the question of the standard, “the problem of the standard.”¹ Therefore, Hanser argues, we should abandon the state-based account of harming.

Instead of the state-based account, Hanser argues, we should opt for an event-based account. According to the event-based account, to harm an agent is to cause him to be “the subject of an event whose status as the undergoing of a harm...derives from its being the sort of event that it is, independently of the badness...of any resulting state” (2008, 440). For example, Hanser argues, death harms us, but it does not cause us to be in any state; when we die, we cease to exist, and when we cease to exist, we cease to occupy states. Since the event-based account avoids locating the harmfulness of harmful events in the states that they cause, Hanser contends, it also avoids the need to specify an amount of welfare a such that one must be made to have less welfare than a in order to be harmed. Therefore, the event-based view circumvents, or dissolves the problem of the standard.

¹ Thomas Petersen calls this problem the “baseline problem” (Peterson, 2014). I avoid this terminology to avoid confusion. In other literature, “baseline problem” is used to refer to the level of ecological health that restoration efforts should aim to achieve, according to some views of restoration (e.g., Lee et al., 2014).

In Section 2, I further explain the problem of the standard. Then, in Section 3, I provide a more in-depth exposition of Hanser's event-based view, focusing on how it is intended to circumvent this problem. Following this, in Section 4, I argue that Hanser's event-based view fails. Then, in Section 5, I defend the state-based account by defending the "Counterfactual Comparative" solution to the problem of the standard. The Counterfactual Comparative Account tells us that an event e harms a subject s if and only if e causes s to be worse off than she would have been had e not occurred.² In other words, the response that the CCA offers to the question of the standard is, " a = the amount of welfare that the agent would have enjoyed had the harmful event not occurred." Suppose, for instance, that Sam punches Jim in the face. According to the CCA, Sam harms Jim if and only if he causes him to be worse off than he would have been had he not been punched: presumably, by causing him to be in more pain than he would have been in had he not been punched.

I defend the CCA against three objections. The first two of these objections are Hanser's. The first is that the CCA fails to accommodate pre-emptive harms (Hanser, 2008, 434-7). The second is that the CCA fails to distinguish the relative seriousness of harms that prevent agents from receiving goods on the one hand and harms that deprive agents of goods they already enjoy on the other (Hanser, 2008, 427-8). I then proceed to respond to a final objection to the CCA from the literature on harm: i.e., that the CCA implausibly counts failures to benefit undeserving others as harms (e.g., Bradley, 2009, 71).

² See, e.g., Feinberg 1984, p. 34.

2 HANSER'S OBJECTION TO THE STATE-BASED VIEW: THE PROBLEM OF THE STANDARD

Before explaining Hanser's event-based view, I will need to further explain the problem it is intended to dissolve: viz. the problem of the standard. In addition to the counterfactual account, there are two other state-based accounts: the temporal account and the absolute account. The temporal account says that an event harms an agent if and only if it causes her to be worse off than she was previous to that event (Hanser, 2008, 425). The answer that this account provides in response to the question of the standard is, " a = the amount of welfare that the agent enjoyed previous to the harmful event." The absolute account says that an event harms an agent if and only if it causes her to have less welfare than she needs to flourish (Hanser, 2008, 425-6). The answer that this account provides in response to the question of the standard is, " a = the amount of welfare that is generally necessary for flourishing."

The problem of the standard is that each of these three responses to the question of the standard faces counterexamples. The temporal account cannot accommodate the harm that agents can suffer by being conceived with congenital defects. Such harms do not cause agents to be worse off than they were at a prior time; the agent does not exist prior to being conceived with a deficiency.³ The absolute account cannot accommodate harms that leave the agent with enough welfare to flourish. For instance, imagine a genius suffers a stroke and is reduced to having normal intelligence. She is harmed by her loss of intelligence even though she is left intelligent enough to flourish (Hanser, 2008, 432). The counterfactual account, according to Hanser, cannot accommodate preemptive harms. Imagine, for instance, that a group of thugs goes to a

³ Hanser does not actually provide the example of congenital defects, but he does suggest that the temporal account fails to accommodate relevantly similar examples (Hanser, 2008, 429).

shopkeeper's house to break his legs. If they had not broken his legs, the loan shark would have broken his legs at the exact same time. The thugs harm the shopkeeper, the objection goes, despite the fact that they do not cause him to be worse off than he would have been otherwise (Hanser, 2008, 434-5).

It is important to note that each of these counterexamples works in the same way. Each case is meant to be (a) a harm that (b) does not meet the necessary conditions for harm provided by the account for which it is a counterexample. These features of the counterexamples, (a) and (b) will be relevant in assessing whether Hanser's account really circumvents the problem of the standard.

3 HANSER'S ARGUMENT FOR THE EVENT-BASED VIEW

Hanser argues that there are two, and only two, ways of suffering harm: suffering 'ordinary' harm and suffering 'preventative' harm (2008, 442). An agent suffers an ordinary harm if and only if she loses a basic good (2008, 441). And, an agent suffers a preventative harm if and only if she is prevented from receiving a basic good (2008, 442).

Hanser argues that preventative harms are "derivative" whereas ordinary harms are "non-derivative." The harmfulness of preventative harms *derives from* the fact that they prevent someone from undergoing an event that is beneficial to her: viz. the receiving of a basic good (2008, 441-2).⁴ Thus, for example, if someone is prevented from gaining sight, she suffers a derivative harm; the harmfulness of being prevented from receiving sight *derives from* the fact that it would have benefitted her to receive sight (2008, 442).

Crucially, undergoing preventative harm, for Hanser, is *not* equivalent to being made to occupy any sort of harmed state. Hanser's argument for this conclusion is not clear, but on my interpretation, it is as follows. Undergoing preventative harm consists of being prevented from receiving a good. Receiving a good benefits the agent, not because it causes him to be in a benefitted state, but simply because of the kind of event that it is (2008, 441). Therefore, suffering preventative harm is not equivalent to, and does not require, being made to occupy a harmed state; it simply requires being prevented from undergoing a type of event (2008, 443-4).

⁴ It might be tempting to interpret Hanser as saying that preventative harms are in some way derivative of ordinary harms. This interpretation arguably gives a certain kind of unity to the account of suffering harm. However, this interpretation is mistaken. Hanser says that preventative harms are derivative of a prior conception of *benefit*—not, by contrast, of a prior conception of harm. Hence, for example, he says that preventative harms are *defined recursively* in terms of benefits, "Someone suffers a level-($n + 1$) *harm* with respect to a certain basic good if and only if he is prevented from receiving a level- n *benefit* with respect to that good" (2008, 442).

By contrast, the harmfulness of ordinary harms is not derivative of a prior conception of benefit. Losing a basic good is suffering a harm simply because basic goods are (basically) valuable. Thus, if an agent loses sight, he suffers a harm simply because sight is a basic good (2008, 441). Crucially, this explanation of the harmfulness, or badness of losing a basic good does not involve referring to the agent's being made to occupy a harmed state (2008, 443-4).

As I stated in the introduction, Hanser's event-based view of harming contains *at least* two crucial components. The first is that to harm an agent *a* is to cause *a* to undergo an event (2008, 440). In particular, to harm *a* is to cause *a* to suffer harm, in his sense; it is to cause an agent to lose, or be prevented from receiving a basic good (2008, 421, 440-2). The second crucial component is that to harm an agent is not necessarily to cause that agent to occupy a harmed condition; i.e., that the state-based view of harming is false (2008, 440).

Hanser's argument for the second component of the event-based view of harming, and thus, his argument against the state-based view of harming is: (i) To harm an agent *a* is to cause *a* to suffer harm (2008, 421). (ii) An agent suffers harm if he loses, or is prevented from receiving, a basic good (2008, 442). (iii) Neither losing, nor being prevented from receiving a basic good necessarily causes the agent to occupy a harmed condition (2008, 441-2). (I explained Hanser's arguments in support of both (ii) and (iii) in the preceding paragraphs of this section.) On the basis of premises (ii)-(iii), Hanser concludes that (iv) suffering harm does not necessarily cause the agent to occupy a harmed condition (2008, 443). Finally, he is able to conclude, on the basis of (i) and (iv), that (v) to harm an agent *a* is not necessarily to cause *a* to occupy a harmed condition (2008, 441, 443).

Hanser argues that it follows from (v) that the question of the standard—i.e., the question of what the amount of welfare *a* is such that one must be made to have less than *a* in order to be

harmed—is misguided. If (v) is true, one need not be made to lack welfare, relative to any measure of assessment, in order to be harmed (2008, 440). This is why I say that, according to Hanser, the problem of the standard is not *solved* but *dissolved*.

4 SUFFERINGS OF HARM WITHOUT HARMED STATES?

4.1 A Tension Between Two Premises of Hanser's Argument for the Event-Based View

The reasons that Hanser cites in favor of (ii) are inconsistent with (iii). In other words, the reasons that Hanser provides for believing that losses of, and preventions from receiving, basic goods are sufferings of harm suggest that both of these necessarily cause agents to occupy harmed conditions.

Let us begin with the case of preventative harms. Hanser argues that suffering preventative harm is a way of suffering harm because, in being prevented from receiving a basic good, one is prevented from being benefitted. What, then, does it *mean* to say receiving a basic good *benefits* the agent? One natural reply is, "it means that receiving a basic good causes the agent to be better off." I believe, however, that Hanser has to reject this reply. If suffering preventative harm is bad for the agent only because it prevents the agent from being benefitted, and being benefitted is being caused to be better off, it follows that suffering preventative harm is bad for the agent only because it prevents the agent from being caused to be better off. This result, however, is inconsistent with (iii) of Hanser's argument against the state-based view of harming. If it is true, then suffering preventative harm is a way of suffering harm only because it causes the agent to be worse off than she would have been otherwise: and thus, causes her to be in a harmed condition.

As I have explained, Hanser rejects the proposition that receiving a basic good benefits the agent because it causes her to be better off; he rejects the state-based analysis of benefit. Instead, he argues, receiving a basic good benefits the agent simply because of the kind of event that it is. This latter claim is not, however, a genuine alternative to the state-based analysis of

benefit. Rather than explaining what it means to say that receiving a basic good is beneficial, it simply clarifies that it is always beneficial to receive a basic good.

Let us turn now to the case of ordinary harms. Hanser says that these are ways of suffering harm because they are bad for the agents that undergo them. And, they are bad for the agents that undergo them because of the kinds of events that they are: i.e., losses of basic goods (Hanser, 2008, 444). Despite Hanser's protests to the contrary, this explanation of why suffering ordinary harm is a way of suffering harm suggests that suffering ordinary harm constitutively causes the agent to occupy a harmed condition. To say that an event is bad for the agent is to say that it causes him to be badly off. Thus, to say that suffering ordinary harm is intrinsically bad for the agent, as Hanser says, is simply to say that suffering ordinary harm causes the agent to be badly off due to its intrinsic nature. At the very least, Hanser owes an alternative explanation of what it might mean to say that suffering ordinary harm is intrinsically bad for the agent.

4.2 The Lack of an Event-Based Definition of Suffering Harm

The apparent inconsistency between (ii) and (iii) points to a bigger problem. This problem is that, there is no way for Hanser to plausibly define suffering harm that is consistent with (iv): i.e., that suffering harm does not necessarily cause the agent to occupy a harmed condition. It is not enough for Hanser to say that there are two ways of suffering harm: suffering preventative harm and suffering ordinary harm. We must know what these two ways of suffering harm have in common in virtue of which they are both ways of suffering harm. Moreover, the doctrine that sufferings of preventative harm are derivative of a prior conception of benefit, whereas sufferings of ordinary harm are not, does not suggest any set of features that both ways of suffering harm have in common.

Suppose that Hanser were to attempt to defend his suggestion that an agent suffers harm if and only if she undergoes an event that is *bad for* her. In that case, we would be justified in asking, “Under what conditions is an agent *a*’s undergoing of an event *e* bad for *a*?” As I have noted, Hanser cannot reply by saying, “*e* is bad for *a* if and only if *e* causes *a* to be badly off.” If that is the right answer, then, if suffering harm is undergoing an event that is bad for the agent, suffering harm is being made badly off; thus, (iv) is false. Nor can Hanser say, “*e* is bad for *a* if and only if *e* causes *a* to suffer harm.” On the present proposal, suffering harm is undergoing an event that is bad for the agent. Hence, if Hanser says that an event is bad for an agent if and only if it causes her to suffer harm, his definitions of “suffering harm” and “bad for” are both circular.

Alternatively, Hanser might have said, “Suffering harm is undergoing an event that *harms* the subject. This feature is shared by both preventative and ordinary harms, and it explains why they are both ways of suffering harm.” In the context of Hanser’s broader project, this definition fails. According to (i) of Hanser’s argument against the state-based view of harming, to harm an agent *a* is to cause *a* to suffer harm. Thus, if Hanser defines suffering harm as undergoing an event that harms the agent, his definition of suffering harm is circular; it tells us that suffering harm is undergoing an event that causes one to suffer harm. The resulting account of suffering harm is therefore uninformative.

Imagine that Tom punches Jerry in the nose. Hanser says that Tom harms Jerry by causing him to undergo an event wherein he suffers harm. What might this event be? Hanser could say, “It is the event of being punched.” The difficulty, though, is explaining *why* undergoing this event constitutes the suffering of a harm, consistently with (iv). We have seen that Hanser cannot say, “Being punched is the suffering of a harm because it harms the agent.” We have also seen that he cannot say, “Being punched is the suffering of a harm because it is bad

for the agent.” And, he clearly cannot say, “Being punched is the suffering of a harm because it causes him to suffer harm.” This response relies on the definition of suffering harm, “An agent suffers harm if and only if he undergoes an event that causes him to suffer harm.” This definition is also, like some of the definitions I have considered above, circular. Moreover, it entails that for an agent to suffer harm, he must be caused to suffer harm an infinite amount of times!

How else might Hanser explain why Jerry suffers harm by undergoing the process of being punched in the face? He could say that this process is the suffering of a harm because it causes his nose to break; it thus causes him to lose a basic good: viz. the use of his nose. This is an incomplete response. The question is, “What is it that the event of being punched in the face has in common with all other sufferings of harm in virtue of which it, and all other sufferings of harm, constitute sufferings of harm?” And, on Hanser’s own view, not all sufferings of harm are losses of basic goods. Sufferings of preventative harms are not sufferings of ordinary harm.

Alternatively, suppose that Hanser were to say that Jones’ being punched is a suffering of harm because it is a way of *being harmed*. In reply, it suffices to note that by “being harmed,” Hanser could not mean “being made to occupy a harmed condition,” nor could he mean “being in a harmed condition.” On either of these definitions, “being harmed” would fail to be logically independent of the agent’s occupying a harmed condition. Thus, Hanser would need to provide another interpretation of “being harmed.” I suspect that this task cannot be successfully carried out.

4.3 A Counterfactual Event-Based Account?

Suppose Hanser slightly emended his account of preventative harm. Instead of maintaining that someone suffers preventative harm if and only if he is prevented from *receiving*

a quantity of a basic good, he could maintain that someone suffers preventative harm if and only if he is prevented from *possessing* a quantity of a basic good. If he were to make this emendation, he could then plausibly argue that suffering an ordinary harm is simply a way of suffering a preventative harm. Losing a good, that is, is plausibly equivalent to being prevented from continuing to possess it. Thus, Hanser could accommodate his entire typology of sufferings of harm by arguing that someone suffers harm if and only if she suffers preventative harm. Call this definition of suffering harm “the event-based counterfactual account.”

The first problem with the event-based counterfactual account is that, if the state-based counterfactual account faces counterexamples, then it does also. Recall the counterexample where thugs break the shopkeeper’s legs, but if they had not, the loan shark would have anyway. One could argue that the thugs do not prevent the shopkeeper from possessing any quantity of a basic good. Even if they had not broken his legs, he would not have had intact legs; the loan shark would have broken them anyway. So, the objection would conclude, according to the event-based counterfactual account, the thugs do not harm the shopkeeper.

I believe that this objection fails, but whether the objection is successful is beside the point. The point is that if the parallel objection to the state-based counterfactual account of harm is successful, this objection to the event-based counterfactual account of harm is likely to be successful as well.

The event-based counterfactual account also faces counterexamples that the state-based counterfactual account does not face. Imagine that Surplus Sam has 2,000,000 loaves of bread. He is prevented from receiving 5 more loaves of bread. If he had received the five extra loaves of bread, they would not have benefitted him in any way; he could have eaten them, but they would

not have tasted better, nor would they have been any more nutritious than any of the other loaves of bread. He could not have sold them either; we may stipulate that he is on a desert island.

The event-based counterfactual account says that Surplus Sam is harmed by being prevented from receiving the five loaves of bread; bread is a basic good. This is an absurd result. We have stipulated that Sam would not have been benefitted in any way by receiving the five loaves of bread. Thus, in being prevented from receiving the loaves of bread, he is not made to undergo any sort of detrimental event.

To be sure, there is a plausible conception of “basic goods” according to which, in being prevented from receiving the 5 loaves of bread, Surplus Sam is not prevented from receiving a basic good. According to this conception, a basic good is a good g such that having a greater quantity of g makes one better off, and having a lesser quantity of g makes one worse off. Call this the “sufficientarian conception” of basic goods; it maintains that having an extra quantity of basic goods is sufficient to ensure that one is better off. The problem is that, if Hanser were to endorse this conception of basic goods, the resulting event-based counterfactual account of suffering harm would simply be a version of the state-based counterfactual account. Preventing someone from receiving a basic good would entail causing her to be worse off than she would have been otherwise.

4.4 A Temporal Event-Based Account?

Hanser could deny that preventative harms exist, and argue, “An agent suffers harm if and only if she undergoes an ordinary harm; i.e., she loses a quantity of a basic good.” This account, call it the “temporal event-based account” would have the requisite unity of a definition.

The unity of this account, however, comes at too great a cost. Many sufferings of harm are not losses of goods. Consider the case of congenital defects, inherited at the time of conception. These are not losses of goods, but they are harms nonetheless. Consider also the case of parents who abuse their children by keeping them from developing language and relationships with other human beings. These parents do not cause their children to *lose* language, or relationships, but they severely abuse their children—and thus harm them—nonetheless.

One might bite the bullet here and argue that neither the child conceived with congenital defects nor the (apparently) abused child suffer harm. Thus, the bullet-biter could argue, neither of these cases is a counterexample to the temporal event-based account of harm. The problem with this argument, beyond the fact that it is a bullet-biting argument, is that if it is successful then there are not likely to be any counterexamples for the temporal state-based account of harm either. So, at best, the temporal event-based account is on even par with the temporal state-based account.

The event-based temporal account, however, also faces counterexamples that the state-based temporal account does not face. Some losses of basic goods are not harms. Suppose Surplus Sam has 2,000,005 loaves of bread. He loses five loaves. Once again, having these loaves did not benefit him in any way; nor would it have benefitted him to continue to have these five loaves. The event-based temporal account absurdly tells us that Surplus Sam suffers harm by losing the five loaves.

Again, one might object that, according to the sufficientarian conception of “basic goods” bread is not a basic good. Thus, in losing the five loaves, Surplus Sam does not lose a quantity of a basic good. The problem with this objection is the same as before. If Hanser were to endorse the sufficientarian conception of basic goods, the resulting event-based temporal account of

suffering harm would simply be a version of the state-based temporal account. Causing someone to lose a basic good would entail causing her to be worse off than she was previously.

One might argue that this last claim is false; even on the sufficientarian conception of basic goods, it might be possible to lose a (quantity of a) basic good without becoming worse off. Assume that money is a sufficientarian basic good, though this assumption would be very contentious; Aristotle, for instance, maintained that wealth is only instrumentally valuable. Imagine that Hannah is taking money from Jim's bank account every month; such that, at a fixed time on the last day of every month, \$20 is transferred from his account to hers. Imagine that at the exact same time that \$20 is transferred from Jim's account to Hannah's each month, \$20 is transferred from Jim's friend Richard's account into Jim's account. It might be argued that, over the course of a year, Jim loses money, even though he never comes to have less money: we may stipulate that, at each moment throughout the entire year, he has \$500 in his account. Thus, even though he loses money—and thus, by assumption, loses a quantity of a sufficientarian basic good—he never becomes worse off.

This argument fails. Jim does not lose money over the course of the year, or over the course of any time-slice of the year. The rate of the loss of any good *g* is measured by the amount of *g* that the agent possesses successively through time. At any initial time during the year, Jim has \$500, and at any subsequent time, he has \$500. Thus, he loses money at a rate of 0, which is to say that he does not lose money. To be sure, Sarah causes Jim to have less money than he would have otherwise. It does not follow, however, that she causes him to *lose* money: at least, not relative to his past.

The case could be altered as follows. Jim has kept a stack of money in his closet for ten years. Sarah takes \$20 from this stack at a fixed time on the last day of each month. At this exact

time each month, Richard puts \$20 in Jim's closet, creating a new stack of money next to the stack that Sarah is taking from. Throughout this process, Jim loses money from his 10-year-old stack. Nonetheless, it could be argued, he does not become worse off, demonstrating that it is possible to lose a basic good without becoming worse off. This argument rests on an equivocation. Jim might lose money *from his 10-year-old stack* but he does not lose money *full-stop*. Therefore, the argument fails to show that it is possible to lose a sufficientarian basic good without becoming worse off; strictly speaking, Jim does not lose any money.

4.5 Summing Up: The Problem for the Event-Based Account

In sum, the problem for Hanser is that there does not appear to be any plausible definition of suffering harm that is consistent with (iv) of his argument for the event-based view. (Recall, (iv) states that one can suffer harm without being made to occupy a harmed state.) Hanser cannot say that suffering harm is undergoing an event that is bad for the agent without resting on an obscurantist conception of what it means for an event to be bad for the agent. It would not help for Hanser to instead define suffering harm as equivalent to suffering preventative harm, nor would it help him to define suffering harm as equivalent to suffering ordinary harm. If the problem of the standard is a genuine problem for the state-based account, then both of these definitions face counterexamples. Second, both of these definitions face counterexamples that their state-based counterparts do not face, such as the Surplus Sam cases.

5 A DEFENSE OF THE COUNTERFACTUAL STATE-BASED ACCOUNT

In this section I argue that three proposed counterexamples for the “Counterfactual Comparative Account” of harm—henceforth, the CCA—are not genuine counterexamples. According to the CCA, an agent *a* is harmed by some event *e* if and only if *e* causes *a* to be worse off than she would have been had *e* not occurred.

5.1 Preemptive Harms

One of Hanser’s counterexamples for the CCA is the case of ‘preemptive harms.’ In such cases, an agent is clearly harmed even though if she had not been harmed in the particular way in which she was harmed she would have been harmed to an equal or more severe extent. Hanser’s example is the case where a group of thugs goes to a shopkeeper’s home and break his legs so that they can rob his store the next day. If the thugs had not broken the shopkeeper’s legs, however, the loan shark would have broken his legs at the exact same time. Thus, Hanser argues, in breaking the shopkeeper’s legs, the thugs do not make him any worse off than he would have been otherwise—he would have been just as badly off if the loan shark had broken his legs instead. So, if the Counterfactual Account tells us that a person is harmed if and only if he is made to be worse off than he would have been otherwise, Hanser argues, the Counterfactual Account tells us that the thugs do not harm the shopkeeper (2008, 434). Surely, this would be an absurd result.

The appearance that cases like the shopkeeper case constitute counterexamples to the counterfactual account rests on a failure to properly characterize the harm suffered by the victim⁵—in the present case, by the shopkeeper. It is the shopkeeper’s having his legs broken

⁵ Similar arguments can be found in Feldman, 1991 and Klocksiem, 2012.

that harms him—not his having his legs broken by the thugs in particular. The counterfactual account confirms that the shopkeeper's having his legs broken harms him. If he had not had his legs broken, he would have been better off. The counterfactual account also confirms that the shopkeeper's having his legs broken by the thugs in particular does not harm him. Had he not had his legs broken by the thugs in particular, he would not have been better off; the loan shark would have broken his legs.

Still, it might be argued that there are ways to adjust the shopkeeper case such that the Counterfactual Account yields the verdict that the shopkeeper is not even harmed by his having his legs broken—despite the fact that it is clear that he is. For example, imagine that just minutes after the shopkeeper has his legs broken, some arbitrary psychopath goes through the shopkeeper's neighborhood and kills everyone whose legs are not broken. When the psychopath reaches the shopkeeper's home, he decides to spare the shopkeeper's life since his legs are broken. Surely, it might seem, the shopkeeper is not *worse off* for having had his legs broken—his being broken-legged is what saves his life. However, there is nonetheless a clear sense in which the shopkeeper is *harmed* for having had his legs broken. Therefore, it would be concluded, the Counterfactual Account fails. For that account tells us that the shopkeeper is harmed for having had his legs broken if and only if he is worse off relative to his counterfactual state for having undergone that event. In the arbitrary psychopath case, however, the shopkeeper is harmed for having had his legs broken despite the fact that that he is not worse off relative to his counterfactual state for having undergone that event—again, if he had not had his legs broken, he would have been killed.

Even though it is true, however, that the shopkeeper is all-things-considered better off for having had his legs broken, there is still a sense in which he is worse off for having undergone

that event. It is because the shopkeeper has had his legs broken that he is alive and broken-legged; if he hadn't had his legs broken, he would have been left dead and non-broken-legged (the psychopath would not have spared his life). There is a sense, however, in which it is worse to be alive and broken-legged than it is to be dead and non-broken-legged; at least being in the latter state does not involve having broken legs. Thus, the counterfactual account tells us that, while the shopkeeper is not harmed "all-things-considered" for having had his legs broken there is still a respect in which he is harmed for having undergone that event; for there is a respect in which the shopkeeper is worse off relative to his counterfactual state for having undergone that event. Surely, that is the correct result.

5.2 Preventative and Ordinary Harms

Hanser levels a second objection to the counterfactual account. This objection centers on his distinction between preventative harms and ordinary harms (2008, 427-8). Recall, an agent suffers a preventative harm if and only if she is prevented from receiving a basic good; and, an agent suffers an ordinary harm if and only if she loses a basic good. Hanser argues that preventative harms are less harmful than ordinary harms. He supports this contention by arguing that countervailing positive effects justify inflicting preventative harms more readily than they justify inflicting ordinary harms (2008, 428). Hanser provides the following example to support this latter claim:

It would generally be impermissible...to *blind* one sighted person in order that two others might have their sight restored; but it might well be permissible to *prevent* one blind person from having his sight restored in order that two others might have their sight

restored instead (say by diverting to the two scarce medical resources originally slated for the one) (2008, 428, *italics mine*).

Hanser argues that this difference in the moral acceptability of inflicting preventative and ordinary harms suggests that preventative harms are not as harmful as ordinary harms (2008, 428).

According to Hanser, however, victims of preventative and ordinary harms are left equally badly off relative to the state that they would have been in had the harm not occurred. For instance, he argues, a victim is left just as blind—and thus, just as badly off relative to her counterfactual state—whether she is prevented from receiving sight or caused to lose her sight (2008, 428). Therefore, Hanser argues, the counterfactual account suggests that preventative and ordinary harms are equally harmful. Thus, Hanser concludes, it is a problem for the counterfactual account that, in fact, preventative harms are less harmful than ordinary harms (2008, 428).

This argument rests on an equivocation. It is true, as Hanser says, that it would be wrong to cause an agent to go blind in order that two others might gain sight. It is also true that it would be permissible for an agent, call him Smith, to divert scarce medical resources away from one person, Jones, in order that two others, Tom and Jerry, might gain sight: despite the fact that this would involve preventatively harming Jones. The discrepancy between the moral value of the actions in these two cases, however, does not stem from a difference between ordinary and preventative harms. Rather, it stems from a moral difference between intentional harms and non-intentional harms. The action in the first case is wrong because it involves intentionally causing harm. The action in the second case is not wrong because it does not involve intentionally

harming anyone; Smith does not prevent Jones from receiving sight either as an end or as means to an end.

To be explicit, in distinguishing the moral acceptability of actions with harmful intentions and harmful foreseen side effects, I am relying on the doctrine of double effect; i.e., that it can be acceptable to perform actions with harmful foreseen side effects if the action is the only way of bringing about a countervailing good. The doctrine of double effect is plausible. I believe that it is the only way to distinguish between the permissibility of foreseeably but unintentionally causing civilian deaths in warfare and intentionally causing civilian deaths to further political purposes. Therefore, I will simply assume that the doctrine of double effect is true for the remainder of this paper. To the objection that it is illicit to ground a conceptual account of harm in normative principles, my reply is that Hanser's objection is normative, so, it is appropriate that I should offer a normative reply.

Why accept that Smith's preventing Jones from gaining sight is not part of the *means* that he uses to bring it about that Tom and Jerry have their sight restored? The answer is that the success of Smith's action is in no way premised on Jones' remaining blind. Thus, we might imagine that Jones finds a doctor who can perform an operation to grant him sight. If Jones has this doctor perform this operation, then the means that Smith uses to grant sight to Tom and Jerry—i.e. diverting the medication away from Jones and to Tom and Jerry—remain just as effective; Tom and Jerry still receive the medication that they need to become sighted.

To be sure, Smith *does*, by stipulation, intentionally prevent Jones from taking the medication; in particular, his preventing Jones from taking the medication is part of the *means* by which he brings it about that Tom and Jerry have their sight restored. Otherwise, it would seem inaccurate to say that he *diverts* the medication away from Smith and to Tom and Jerry.

However, it does not follow from the fact that Smith intentionally prevents Jones from taking the medication that he also intentionally prevents him from receiving sight. That is, even if Smith *foresees* that if he prevents Jones from taking the medication he will thereby prevent Jones from receiving sight, he may still intend to prevent Jones from taking the medication without *intending* to prevent him from receiving sight. To repeat, the fact that Smith's action does not involve intentionally preventing Jones from receiving sight is demonstrated by the following fact: Smith's action would be successful under the circumstance that he successfully prevents Jones from taking the medication and yet does not thereby cause Jones to remain blind—say, because Jones has the doctor perform the sight-inducing operation.

There is another interpretation of Hanser's argument. On this interpretation, the first premise of the argument is the same as it was before: it would be wrong to *intentionally* cause an agent to go blind in order that two others might gain sight. The second premise, however, is different. That premise is: it would not be wrong to *intentionally* prevent an agent from gaining sight in order that two others might gain sight. Therefore, the argument concludes, ordinary harms are worse than preventative harms.

This argument relies on contentious consequentialist assumptions. Consider the following non-consequentialist principle: it is in general unacceptable to intentionally harm agents, either as an end or a means, regardless the positive consequences. If this principle is true, the second premise of Hanser's argument is dubious; contrary to that premise, it is wrong to intentionally prevent an agent from gaining sight in order that two others might gain sight. Moreover, it is very plausible that some version of the non-consequentialist principle—that is strong enough to render the second premise of Hanser's argument false—is true.

For instance, imagine a case where a cruel doctor agrees to restore the sight of two people at time t_2 if and only if a third person Jones is blind at that time. Jones is already blind, but he has an appointment with Dr. Jeffers to have his sight restored sometime before t_2 —say, at time t_1 . Smith has the option of preventing Dr. Jeffers from reaching Jones at time t_1 —say, by paying him off—so that he will still be blind by time t_2 . I believe that it would be wrong for Smith to pay off Dr. Jeffers even though it would have the good consequence of causing the cruel doctor to restore the sight of the two others at time t_2 . It would be wrong, I believe, simply because it would involve intentionally harming Jones. And, it is in general wrong to intentionally harm innocent others even as a means to a good end.

There is a way for Hanser to emend his argument so that it relies neither on equivocations (as it does on the first interpretation I have considered) nor on problematic consequentialist assumptions (as it does on the second interpretation I have considered). On this emended argument, Hanser would have us compare the following two cases. In the first case, Smith performs an action that has the foreseeable side effect of causing Jones to *lose* his sight. He performs this action because it is the only means by which the sight of two others can be restored. In the second case, Smith performs an action that has the foreseeable side effect of *preventing Jones from gaining* sight. He performs this action, again, because it is the only means by which the sight of two others can be restored. Hanser would have us to conclude that Smith's action in the first case is wrong, but that his action in the second case is acceptable. The only reason for this discrepancy, Hanser would argue, is that it is worse to cause someone to lose his sight than it is to prevent someone from gaining sight. In other words, ordinary harms are worse than preventative harms. We need not abandon the non-consequentialist principle in order to be

persuaded by this argument. For, in case 2, Smith does not *intentionally* harm Bill. So, we may accept that his action is acceptable without abandoning the non-consequentialist principle.

The initial problem with this argument is that it begs the question against its opponent. We have no reason to believe that Smith's action is worse in case 1 than it is in case 2 unless we already believe that ordinary harms are worse than preventative harms. The contention that ordinary harms are worse than preventative harms, however, is supposed to be the conclusion of the argument—not one of its premises.

Moreover, I believe that the contention that Smith acts wrongly in case 1 is false. To see this, consider the following way of developing case 1. Sarah has purchased for Jones a medication that he needs in order to *retain* his sight. Smith knows that the only possible way to grant sight to two blind agents, Tom and Jerry, is to convince Sarah to give the medication to them instead of Jones. Therefore, he convinces Sarah to give Tom and Jerry the medication. This is clearly a version of case 1, since all parameters for case 1 are met. Smith's action is justified, however; he does not intend to cause any harm to Jones, and the good effects of his action outweigh the bad effects.

5.3 Omissions

A third objection from the literature is that the CCA yields the result that omissions to benefit undeserving others are harms. This result, the objection goes, is implausible (e.g. Bradley, 2009, 71). For example, imagine that Sam fails to give \$500 to Bob, a stranger he passes on the sidewalk, to whom he does not owe the money. Sam's omission causes Bob to be worse off than he would have been had it not occurred; it causes him to have \$500 less than he would have had in that case. Therefore, the CCA yields the result that Sam's omission harms

Bob. Proponents of the presently considered objection assert that this consequence is implausible.

The first thing to note in responding to this objection is that the circumstances under which Sam can truthfully be said to *omit* to give \$500 to Bob are rare. For, in order for an agent *a* to omit to perform some action *b*, there must have been some expectation that *a* would *b* (Clarke, 2012; Feinberg, 1990, 161). Since Sam is not expected to give Bob \$500, he could not be said to *omit* to give him \$500; merely not giving Bob \$500 does not amount to an omission to do so. Hence, part of the reason that it may seem implausible that Sam harms Bob is that, under normal circumstances, he does not omit to benefit Bob in the first place.

Suppose, however, that we develop the case so that there is some expectation that Sam gives Bob the money. Perhaps Sam decides to give Bob the money (despite the fact that Bob is a complete stranger) but omits to follow through with his decision. In this case, Sam arguably omits to benefit Bob. I do not see, however, why it should be regarded as implausible that Sam's omission harms Bob. The fact that it causes Bob to be worse off than he would have been otherwise gives us *prima facie* reason to think that it harms him. For, the CCA is a very plausible account of harm.

Perhaps the reason that many believe that it is implausible to suppose that Sam harms Bob is that they believe that harming an agent necessarily entails wronging him. Some philosophers have defended this belief (Cohen, 2007, 482). If it is true, then it is implausible that Sam harms Bob. For, it is clear that Sam does not wrong Bob.

I do not believe, however, that harming an agent necessarily entails wronging him. For instance, if business A outcompetes business B, the owners of business A damage the livelihood of the owners of business B. The owners of A therefore harm the owners of B. The owners of A,

however, clearly do not wrong the owners of B. Additionally, natural evils and non-human animals can harm us, despite the fact that they cannot wrong us. For instance, if a bear attacks me in the woods, it harms me. Wrongful harms are important kinds of harms in the context of political philosophy. Perhaps such harms justify legal intervention in ways that harms that are not also wrongs do not. Thus, those who focus on wrongful harms within the context of political philosophy are right to do so. Strictly speaking, however, we can harm one another without wronging one another, as the above examples suggest.

6 CONCLUSION

I have argued against the event-based account of harming. My argument was that there is no way to define suffering harm consistently with the idea that one can suffer harm without being made to occupy a harmed state. All of the initially plausible definitions fail. I have also defended the state-based account of harming by defending the CCA against three objections.

I have, however, left one of Hanser's objections to the state-based account unanswered. When we die, Hanser argues, we cease to exist, and when we cease to exist, we cease to occupy harmed states. Death, however, clearly harms us. Therefore, Hanser concludes, the state-based account of harming is false; harming an agent is not causing that agent to be in a harmed state (Hanser, 2008, 437-440).

One way to respond would be to reject the premise that when we die, we cease to exist. Perhaps, as many philosophers have argued throughout history, we continue to live as immaterial souls when we die. Another way to respond to the objection would be to argue that the process of dying only harms us while we are still alive, insofar as it causes our vital powers to be diminished. I leave a fuller discussion of this issue to future research.⁶

⁶ Thomas Nagel argues that while we are alive, the fact that we *will* die causes us to be in a harmed state since it deprives us of opportunities we would have otherwise (Nagel, 1979). If death only harms us because of its future inevitability, however, the agent who dies tragically suffers no greater harm than the person who dies a natural death: unless the circumstances of our death are fated in advance. I cannot be harmed by being destined to die a tragic death if I am not destined to die a tragic death in the first place.

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